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June 1, 2015

The Honorable Eric N. Vitaliano
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Travel Sentry, Inc. v. David Tropp*
Case No. 06-cv-6415 ("Travel Sentry")

David Tropp v. Conair Corp. et al.
Case No. 08-cv-4446 ("Conair")

Dear Judge Vitaliano:

We are counsel for David Tropp in the respective two cases cited above. We write in response to the letter to the Court of William L. Prickett, counsel for Travel Sentry and each of the defendants in the *Conair* case, dated May 22, 2015.

In that letter, counsel for Travel Sentry and the Conair defendants informed the Court of the United States Court of Appeals recent ruling in *Akamai Tech., Inc. v. Limelight Networks, Inc.*, 2009-1372, slip op. (Fed. Cir. May 13, 2015), where the Court ruled *on remand from the Supreme Court* in a 2:1 decision to uphold the "single entity rule" as concerns direct infringement as enunciated in *BMC Resources, Inc. v. Paymentech, L.P.*, 498 F.3d 1373 (Fed. Cir. 2007) and *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008).

Counsel concludes his letter by stating that because of this decision of the Federal Circuit "neither Travel Sentry nor any of the Conair defendants can be liable for infringement of Tropp's patents," thereby implying that the pending motions for summary judgment on noninfringement should be granted. *See Travel Sentry*, ECF No. 216, *Conair*, ECF No. 343. David Tropp respectfully disagrees. As stated, the ruling was a 2:1 decision. There was an extremely vigorous dissent which argues for a change to the single entity rule to close a blatant loophole in the law.[1] If the dissent's opinion is adopted by the full court in an *en banc* hearing, it is respectfully submitted that summary judgment on the issue of infringement in these cases could not be granted. Akamai has already publicly announced it intends to seek an *en banc* hearing.

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[1] It should be noted that each of the Judges on the panel ruled as they did in the Federal Circuit's previous *en banc* ruling on the case.

Therefore, in order to conserve the resources of this Court, and the parties, it is submitted that the Court should continue to defer ruling until the law on the single entity rule is finally ruled on and the appeals process is completed. Otherwise, a situation could arise, as it did last time, where the appeals process could change the law, which could lead to a remand and further briefing in light of the Court of Appeals' or the Supreme Court's final decision. In the interest of finality, this Court should wait until the appeals process is exhausted and the law is made clear on this point.

Respectfully submitted,

/s/ Donald R. Dinan

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CERTIFICATE OF SERVICE

I hereby certify that June 1, 2015, I served the foregoing Letter to the Court upon counsel via ECF:

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